

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 161 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

LOHAR HIRJI NATHUBHAI

Versus

GUSAIN ZAVERGAR SHYAMGAR

Appearance:

MR YS MANKAD for Petitioner
MR PADMRAJ K JADEJA for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/07/98

ORAL JUDGEMENT

Heard learned advocates Mr.Y.S Mankad and Mr. P.K Jadeja for the petitioner and the respondent No. 1 respectively and learned APP Mr. S.R Divetia for Respondent No. 2.

2. This application under Section 397 of the Code of Criminal Procedure arises out of the claim for muddamal made by the petitioner herein against the accused Respondent No. 1. It appears that police had raided the premises of the petitioner herein and had found six Television sets, a Motor cycle and other miscellaneous items in his possession. The said muddamal was seized by the police and was ordered to be placed in the police custody. The petitioner was tried for the offence under section 124 of the Bombay Police Act for being in possession of the stolent property. In the course of trial, the charge was not proved and under the judgment and order dated 31st December, 1994, the petitioner was acquitted of the criminal charge. In the course of trial, the petitioner made an application Exh. 9 for interim possession of the muddamal, so also, the present respondent no. 1 made an application Exh. 5 for the possession of the said muddamal claiming that he was the owner of the muddamal and claimed that possession should be ordered to be given to respondent no. 1. None of the said applications were decided by the learned trial Judge and the hearing was postponed till the final disposal of criminal case. Petitioner thereafter made an application Exh. 26 for the recovery of the possession of muddamal which he withdrew and the respondent no. 1 made an application Exh. 42 for recovery of possession of a scooter which was found alongwith other muddamal items. After acquittal of the petitioner of the criminal charge, applications Exhs. 5 & 9 made by the respondent no. 1 and petitioner respectively were heard. Both the parties i.e., petitioner and respondent no. 1 were permitted to lead evidence in support of their rival claim to possession. Having thus made an inquiry, the learned trial Judge found that the muddamal belonged to respondent no. 1; that the said muddamal was given by the respondent no. 1 to Bai Jubedaben on hire and that one Iqbal miya had unlawfully pawned the said muddamal to the present petitioner. The learned trial Judge, therefore, held that the respondent no. 1 was the owner of the muddamal and the petitioner had no right to be in possession of the said muddamal. He, therefore, under his judgment and order dated 10th March, 1997 allowed the claim made by the respondent no. 1 and directed that muddamal lying in the custody of the police may be returned to the respondent no. 1.

3. Feeling aggrieved, petitioner preferred Criminal Appeal No. 47 of 1997 before the learned Addl. Sessions Judge, Kutch at Bhuj. The learned Addl. Sessions Judge

under his judgment dated 5th March, 1998 dismissed the appeal. Feeling aggrieved, petitioner has preferred this petition under Article 226 of the Constitution of India.

4. Mr. Mankad has submitted that the petitioner was tried for being in possession of stolen property and was acquitted of the said charge. It is undisputed that muddamal was recovered from the petitioner. He, therefore, contended that possession of muddamal having been recovered from the petitioner and the petitioner having been acquitted of the criminal charge, the muddamal should be returned to the petitioner. He has further submitted that if at all the respondent no. 2 has any claim over the muddamal, the same is of civil nature and the respondent no. 1 can pursue his remedy before the civil court. He has submitted that the trial Court exercising power under Section 452 of the Code of Criminal Procedure, had no authority to decide the title over the muddamal or to decide the civil dispute between the petitioner and the respondent no. 1. He has, therefore, contended that the impugned orders made by the trial Court and also the appellate court be set aside and the order be made to hand over possession of the muddamal to the petitioner. In support of his contention, he has relied upon judgments of this Court in the matter of Lalluram Mohanlal v. State of Gujarat, (1967 Cr.L.J 1639), and in the matter of Hussain Amibhai Qureshi v. Nyaj Mohmed Badankha Babi & Anr., (31 (2) GLR 1035).

5. Petition is contested by the respondent no. 1. Mr. Jadeja has submitted that the inquiry envisaged under section 452 of the Code of Criminal Procedure is of summary nature and having so inquired, the learned trial Judge found that the respondent no. 1 is the owner of the muddamal. The learned trial Judge is, therefore, right in handing over possession of the muddamal to the respondent no. 1. He has submitted that the petitioner had no right to possess the said muddamal, and therefore, the muddamal cannot be handed over to the petitioner in spite of his acquittal of the criminal charge. In support of his contention, he has relied upon judgments of this Court in the matters of Soni Chimanlal Jethalal v. State of Gujarat & Anr., [1994 (2) GLR 1100]; State of Gujarat v. Nareshbhai Jivanbhai Harijan & Ors., (1988 (2) GLH 136) and of Pravin Kantilal Baradiya v. State of Gujarat & Ors., {Criminal Appeal No. 181 of 1997, decided by Hon'ble Mr. Justice M.H Kadri on 8th May, 1998}.

6. Section 452 of the Code of Criminal Procedure deals with disposal of the property at the conclusion of trial. Sub-section 1 thereof empowers the trial Court to make such orders as it thinks fit for the disposal, inter alia, by delivery to any person claiming to be entitled to possession thereof, of any property produced before it or in its custody. Sub-section 2 thereof empowers the trial Court for delivery of any property to any person claiming to be entitled to possession thereof without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court, if the order made under Sub-section (1) is modified or set aside in appeal or revision. Thus, it is evident that the Court is not bound to hand over possession of the property produced before it in the course of trial to the person from whom it is recovered. The court is supposed to make an inquiry into such claim and to order delivery of possession of such property to any person as it thinks fit. If upon inquiry, it is found that the person from whose possession such properties were recovered was not supposed to be in possession of such property, the court may not order delivery of possession of such property to the person from whom such property was recovered. In the present case, both, the petitioner and the respondent no. 1, have adduced evidence in support of their claim for possession. Upon appreciation of the said evidence, the trial Court has held respondent no. 1 to be the lawful owner of the said properties. While it is found that the petitioner from whose possession the said properties were recovered, was not supposed to be in possession of the said property or in other words, the petitioner was not found to be in lawful possession of the said property. The above finding recorded by the trial Court has been confirmed by the lower appellate Court. This court exercising its revisional powers under Section 397 of the Code cannot reappreciate the evidence and interfere with the concurrent finding recorded by both the courts below. In the matter of Lalluram Mohanlal (Supra), the Court was considering the order of confiscation of property recovered from the possession of the accused who were ultimately acquitted of the charge of being in possession of stolen property. The court held that the accused having been acquitted, the property recovered from his possession cannot be confiscated. The facts being entirely different, the said judgment shall have no applicability to the facts of the present case. In the matter of Husain Amibhai Qureshi (Supra), the court found that though the complainant was the registered owner of the muddamal article i.e., a truck he had willfully

handed over possession thereof to the accused and the accused was thus found to be in lawful possession of the muddamal article. The Court, therefore, held that upon acquittal of the accused of the criminal charge, the muddamal article was required to be handed over to the accused. In the present case, the petitioner is not held to be in lawful possession of the muddamal articles, and therefore, he cannot avail of the benefit of the above referred observations of the Court. In the matter of Soni Chimanlal Jethalal (Supra), the Court has held that the Court does not adjudicate upon civil rights of the party while dealing with disposal of the muddamal article at the conclusion of trial, the Court has only to see as to who is the person best entitled for the possession of the muddamal articles. It is further held that no person can claim, as of right, that the property seized from him should be returned to him in such contingency. In the matters of Nareshbhai Jivanbhai (Supra), and of Pravin Kumar (Supra) also, the Court held that the bona fide purchaser of stolen goods for value without notice would not get a better title and claim for recovery of possession of the property by such purchaser shall be rejected.

7. In the present case as stated hereinabove, the respondent no. 1 has been found to be lawful owner of the muddamal articles and the trial Court, therefore, cannot be said to have committed any error in ordering the delivery of the possession of the said muddamal articles to the respondent no. 1 herein. Since the petitioner has not been found to be in lawful possession of the said articles, he cannot claim delivery of possession of said articles as a matter of right, upon his acquittal of the criminal charge.

8. In view of the above discussion, application is dismissed. Rule is discharged. There shall be no order as to costs. Mr. Mankad, the learned advocate for the petitioner requests that the order of delivery of possession of the muddamal articles to respondent no. 1 be stayed for a period of one month with a view to facilitating the petitioner to approach the Civil Court for appropriate relief. Request is rejected. Registry is directed to send the writ forthwith.

Prakash*